



**4910-06-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Part 270**

**[Docket No. FRA-2011-0060, Notice No. 11]**

**RIN 2130-AC81**

#### **System Safety Program**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule; stay of regulations.

**SUMMARY:** On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement a system safety program (SSP) to improve the safety of their operations. FRA has stayed the SSP final rule's requirements until September 4, 2019. FRA is issuing this final rule to extend that stay until March 4, 2020.

**DATES:** Effective August 29, 2019, 49 CFR part 270, stayed February 13, 2017, at 82 FR 10443, and further stayed March 21, 2017, at 82 FR 14476, May 22, 2017, at 82 FR 23150, June 7, 2017, at 82 FR 26359, November 30, 2017, at 82 FR 56744, and December 7, 2018, at 83 FR 63106, is further stayed until March 4, 2020.

**ADDRESSES:** *Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Gross, Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel; telephone: 202-493-1342; e-mail: Elizabeth.Gross@dot.gov.

**SUPPLEMENTARY INFORMATION:** On August 12, 2016, FRA published a final rule requiring commuter and intercity passenger railroads to develop and implement an SSP to improve the safety of their operations. *See* 81 FR 53850. On February 10, 2017, FRA stayed the SSP final rule's requirements until March 21, 2017, consistent with the new Administration's guidance issued January 20, 2017, intended to provide the Administration an adequate opportunity to review new and pending regulations. *See* 82 FR 10443 (Feb. 13, 2017). To provide additional time for that review, FRA extended the stay until May 22, 2017, June 5, 2017, December 4, 2017, December 4, 2018, and then September 4, 2019. *See* 82 FR 14476 (Mar. 21, 2017); 82 FR 23150 (May 22, 2017); 82 FR 26359 (June 7, 2017); 82 FR 56744 (Nov. 30, 2017), and 83 FR 63106 (Dec. 7, 2018). The provisions in part 270 were adopted on August 12, 2016, for the purposes of 49 U.S.C. 20119(b). That adoption was unaffected by the subsequent stays.

FRA's review included petitions for reconsideration of the SSP final rule (Petitions). Various rail labor organizations (Labor Organizations) filed a single joint petition.<sup>1</sup> State and local transportation departments and authorities (States) filed the three other petitions, one of which was a joint petition (State Joint Petition).<sup>2</sup> The State Joint Petition requested that FRA stay the SSP final rule, and NCDOT specifically

---

<sup>1</sup> The labor organizations that filed the joint petition are: the American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers and Trainmen (BLET), Brotherhood of Maintenance of Way Employees Division (BMWED), the Brotherhood of Railroad Signalmen (BRS), Brotherhood Railway Carmen Division (TCU/IAM), and Transport Workers Union of America (TWU).

<sup>2</sup> The Capitol Corridor Joint Powers Authority (CCJPA), Indiana Department of Transportation (INDOT), Northern New England Passenger Rail Authority (NNEPRA), and San Joaquin Joint Powers Authority (SJJA) filed a joint petition (Joint Petition). The North Carolina Department of Transportation (NCDOT) and State of Vermont Agency of Transportations (VTrans) each filed separate petitions.

requested that FRA stay the rule while FRA was considering the petitions. All Petitions were available for public comment in the docket for the SSP rulemaking. On November 15, 2016, the Massachusetts Department of Transportation (MassDOT) submitted a comment supporting the State Joint Petition, also asking FRA to stay the SSP final rule. FRA did not receive any public comments opposing the States' requests for a stay.

On October 30, 2017, FRA met with the Passenger Safety Working Group and the System Safety Task Group of the Railroad Safety Advisory Committee (RSAC) to discuss the Petitions and comments received in response to the Petitions.<sup>3</sup> FRA specifically invited its State partners to this meeting, which was also open to the public. This meeting was necessary for FRA to receive input from industry and the public, and to discuss potential paths forward to respond to the Petitions prior to FRA taking final action. During the meeting, a representative from the Oregon Department of Transportation asked whether the SSP final rule would be further stayed pending FRA's development of a response to the Petitions and public input received at the meeting. An FRA representative indicated that he anticipated a further stay of the rule to provide time to resolve the issues raised by the petitions. None of the meeting participants expressed opposition to a further stay. *See generally* FRA-2011-0060-0046.

In response to draft rule text FRA presented for discussion during the RSAC meeting, the States indicated they would need an extended caucus to discuss. On March

---

<sup>3</sup> Attendees at the October 30, 2017, meeting included representatives from the following organizations: ADS System Safety Consulting, LLC; American Association of State Highway and Transportation Officials (AASHTO); American Public Transportation Association (APTA); American Short Line and Regional Railroad Association (ASLRRA); ATDA; Association of American Railroads (AAR); BLET; BMWED; BRS; CCJPA; The Fertilizer Institute; Gannett Fleming Transit and Rail Systems; International Brotherhood of Electrical Workers; Metropolitan Transportation Authority (MTA); National Railroad Passenger Corporation (Amtrak); National Transportation Safety Board (NTSB); NCDOT; NNEPRA; San Joaquin Regional Rail Commission/Altamont Corridor Express; Sheet Metal, Air, Rail, and Transportation Workers (SMART); and United States Department of Transportation – Transportation Safety Institute.

16, 2018, the Executive Committee of the States for Passenger Rail Coalition (SPRC)<sup>4</sup> provided, and FRA uploaded to the rulemaking docket, proposed revisions to the draft rule text. *See* FRA-2011-0060-0050. FRA reviewed and considered these suggested revisions in formulating its proposed response to the petitions for reconsideration.

On June 12, 2019, FRA published a notice of proposed rulemaking (NPRM) that proposed certain amendments responding to the petitions for reconsideration. *See* 84 FR 27215 (June 12, 2019). In the NPRM, FRA specifically requested public comment on a proposed stay extension to allow FRA time to review any comments on the NPRM and issue a final rule. *Id.* at 27216. The deadline for submitting written comments on the NPRM was August 12, 2019.

FRA received thirteen comments in response to the NPRM.<sup>5</sup> Comments from NCDOT, MassDOT, and CTDOT supported extending the stay, with NCDOT specifically requesting that FRA stay implementation of the rule until “all applicable administrative and judicial processes are completed.” FRA received one comment objecting to extending the stay from Amtrak, which urged FRA to lift the stay and implement the rule immediately. No other commenters responded to FRA’s request for comment on a proposed stay extension.

FRA has considered Amtrak’s comment opposing extension of the stay in light of Amtrak’s central role in the Nation’s passenger rail system. Nevertheless, given the number of comments received in response to the SSP NPRM, the importance of the

---

<sup>4</sup> SPRC’s website indicates it is an “alliance of State and Regional Transportation Officials,” and each State petitioner appears to be an SPRC member. *See* <https://www.s4prc.org/state-programs>.

<sup>5</sup> Comments were submitted by AAR, Amtrak, APTA, CCJPA (jointly with INDOT, Los Angeles-San Diego-San Luis Obispo Rail Corridor Agency, and SJJPA), the Connecticut Department of Transportation (CTDOT), MassDOT, Massachusetts Bay Transportation Authority, NCDOT, NNEPRA (jointly with the State of Maine Department of Transportation), SPRC, VTrans, Washington Department of Transportation, and one individual.

issues discussed therein, the lack of opposition to the stay from all commenters except Amtrak, and FRA's interest in addressing the issues raised in the petitions through notice and comment rulemaking prior to requiring full compliance with the SSP final rule, FRA believes it appropriate to extend the stay of the rule an additional six months until March 4, 2020. Extending the stay should provide FRA adequate time to review comments responding to NPRM and to issue a final rule in that proceeding.

### **Regulatory Impact and Notices**

#### *Executive Orders 12866 and 13771, and DOT Regulatory Policies and Procedures*

This final rule is a non-significant deregulatory action within the meaning of Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). The final rule is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings are below.

In August 2016, FRA issued the System Safety Program final rule (2016 Final Rule) as part of its efforts to continuously improve rail safety and to satisfy the statutory mandate in sections 103 and 109 of the Rail Safety Improvement Act of 2008. The 2016 Final Rule requires passenger railroads to establish a program that systematically evaluates railroad safety risks and manages those risks with the goal of reducing the number and rates of railroad accidents, incidents, injuries, and fatalities. Paperwork requirements are the largest burden of the 2016 Final Rule.

FRA believes that this final rule, which will stay the requirements of the 2016 Final Rule until March 4, 2020, will reduce regulatory burden on the railroad industry. By staying the requirements of the 2016 Final Rule, railroads will realize a cost savings as railroads will not sustain any costs during the first six months of this analysis. In

addition, because this analysis discounts future costs and this final rule will move forward all costs by six months, the present value costs of this stay will lower the present value cost of the SSP rulemaking. FRA estimates this cost savings to be approximately \$170,618, at a 3-percent discount rate, and \$164,240, at a 7-percent discount rate. The following table shows the 2016 Final Rule’s total cost, delayed an additional six months past the 2019 stay extension, the implementation date total costs, and the cost savings from the additional six-month implementation date delay.

	<b>Present Value (7%)</b>	<b>Present Value (3%)</b>
2016 Final Rule, total cost	\$ 2,327,223	\$ 3,412,649
Cost savings from six-month delay	\$ 164,240	\$ 170,618
2016 Final Rule, total cost with cost savings from six-month delay	\$ 2,162,983	\$ 3,242,031

#### *Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, and Executive Order 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule will affect passenger railroads, but will have a beneficial effect, lessening the burden on any small railroad.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation.

The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “linehaul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 1,500 employees, or a “commuter rail system” with annual receipts of less than \$15.0 million dollars. *See* “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The \$20-million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

For purposes of this analysis, this final rule will apply to 31 commuter or other short-haul passenger railroads and two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation (ARC). Neither is considered a small entity. Amtrak serves populations well in excess of 50,000, and the ARC is owned by the State of Alaska,

which has a population well in excess of 50,000.

Based on the definition of “small entity,” only one passenger railroad is considered a small entity: the Hawkeye Express (operated by the Iowa Northern Railway Company). As the final rule is not significant, this final rule will merely provide this entity with additional compliance time without introducing any additional burden.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. A substantial number of small entities may be impacted by this regulation; however, any impact will be minimal and positive.

#### *Paperwork Reduction Act*

There are no new collection of information requirements contained in this final rule and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, an information collection submission to the Office of Management and Budget (OMB) is not required. The record keeping and reporting requirements already contained in the SSP final rule were approved by OMB on October 5, 2016. The information collection requirements thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130-0599, and OMB approval expires on October 31, 2019.

#### *Federalism Implications*

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive



Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this rule does not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### *Environmental Assessment*

FRA has evaluated this rule in accordance with its “Procedures for Considering Environmental Impacts” (FRA’s Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this rule is not a major FRA action (requiring the preparation of an environmental impact

statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this rule is not a major Federal action significantly affecting the quality of the human environment.

#### *Unfunded Mandates Reform Act of 1995*

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

#### *Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). FRA has evaluated this rule in accordance with Executive Order 13211 and has determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

Executive Order 13783, “Promoting Energy Independence and Economic Growth,” requires Federal agencies to review regulations to determine whether they potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* 82 FR 16093 (Mar. 31, 2017). FRA determined this regulatory action will not burden the development or use of domestically produced energy resources.

#### **List of Subjects in 49 CFR Part 270**

Penalties, Railroad safety, Reporting and recordkeeping requirements, System safety.

#### **The Rule**

In consideration of the foregoing, FRA extends the stay of the SSP final rule published August 12, 2016 (81 FR 53850) until March 4, 2020.

**Authority:** 49 U.S.C. 20103, 20106-20107, 20118-20119, 20156, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC.

**Ronald Louis Batory,**  
*Administrator.*

[FR Doc. 2019-18789 Filed: 8/29/2019 8:45 am; Publication Date: 8/30/2019]